



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0486; FRL-9918-68-Region-4]

Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky: New Source Review for Fine Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) to EPA on January 31, 2013. The SIP revision modifies the Commonwealth's New Source Review (NSR), Prevention of Significant Deterioration (PSD), and Nonattainment New Source Review (NNSR) regulations to adopt into the Kentucky SIP Federal NSR permitting requirements for the implementation of the fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). The approved changes in Kentucky's January 31, 2013, SIP submission are necessary to comply with Federal requirements. EPA is approving the Commonwealth's January 31, 2013, revision to the Kentucky SIP because the Agency has determined that the changes are consistent with the Clean Air Act (CAA or Act). Additionally, EPA is converting two conditional approvals related to the PSD infrastructure requirements for the 1997 and 2006 PM_{2.5}, and 2008 8-hour Ozone NAAQS to full approval under the CAA.

DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2013-0486. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Kentucky SIP, contact Mr. David (Brad) Akers, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9089; e-mail address: akers.david@epa.gov. For information regarding NSR, contact Ms.

Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562-9214; e-mail address: adams.yolanda@epa.gov. For information regarding PM_{2.5} NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Telephone number: (404) 562-9104; e-mail address: huey.joel@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action to approve the Commonwealth of Kentucky's January 31, 2013, SIP revision to adopt Federal requirements for NSR permitting. The Commonwealth's SIP revision makes changes to the regulations in Kentucky's Air Quality Regulations, 401 Kentucky Air Regulations (KAR) 51:001- *Definitions for 401-KAR Chapter 51*; 401 KAR 51:017 – *Prevention of significant deterioration of air quality* and 401 KAR 51:052 – *Review of new sources in or impacting upon nonattainment areas* to adopt NSR requirements related to the implementation of the PM_{2.5} NAAQS as promulgated in the rulemakings entitled “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers,” Final Rule, 73 FR 28321 (May 16, 2008) (hereafter referred to as the “NSR PM_{2.5} Rule”) and “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),” Final Rule, 75 FR 64864 (October 20, 2010) (hereafter referred to as the “PM_{2.5} PSD Increments-SILs-SMC Rule”). The Commonwealth must make this SIP revision to comply with Federal NSR permitting regulations at 40 CFR 51.166 and

51.165. Originally, the Commonwealth included SILs and SMC thresholds in the January 31, 2013, SIP submission, consistent with the October 20, 2010, PM_{2.5} PSD Increments-SILs-SMC Rule. However, EPA cannot act on SILs or SMC provisions due to the January 22, 2013, decision by the D.C. Circuit Court of Appeals vacating the portions of the PM_{2.5} PSD Increment-SILs-SMC Rule addressing the SMC and SILs (and remanding the SILs portion to EPA for further consideration).¹ *See Sierra Club v. EPA*, 705 F.3d 458 (D.C. Cir. 2013). Accordingly, Kentucky has since submitted a letter to EPA dated July 22, 2014, requesting that the SILs and SMC provisions from the January 31, 2013, SIP submission be withdrawn from EPA consideration; therefore these provisions are no longer before EPA for consideration. The letter can be found in Docket ID: EPA-R04-OAR-2013-0486.

Additionally, the Commonwealth's January 31, 2013, SIP submission satisfies EPA's multiple conditional approvals of the PSD-related requirements for sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) and 110(a)(2)(J) of Kentucky's infrastructure SIPs for the 1997 and 2006 PM_{2.5}, and 2008 8-hour Ozone NAAQS. As a result, EPA is acting to convert from conditional approval to full approval KDAQ's infrastructure requirements related to its PSD program.

On July 23, 2014, EPA published a proposed rulemaking to approve the aforementioned changes to the Commonwealth's NSR program at 401 KAR 51:001, 401 KAR 51:017 and 401 KAR 51:052, and to convert multiple conditional approvals for the Commonwealth's infrastructure SIP for the 1997 and 2006 PM_{2.5}, and 2008 8-hour Ozone NAAQS. *See* 79 FR

¹ On January 22, 2013, D.C. Circuit granted a request from EPA to vacate and remand to the Agency the portions of the October 20, 2010 rule addressing the SILs for PM_{2.5}, except for the parts codifying the PM_{2.5} SILs in the NSR rule at 40 CFR 51.165(b)(2), so that the EPA could voluntarily correct an error in the provisions. *See Sierra Club v. EPA*, 705 F.3d 458 at 463-66 (D.C. Cir. 2013). The Court also vacated parts of the PM_{2.5} PSD Increment-SILs-SMC Rule establishing the PM_{2.5} SMC, finding that the Agency had exceeded its statutory authority with respect to these provisions. *Id.* at 469. On December 9, 2013, EPA issued a final rulemaking to remove the vacated and remanded PM_{2.5} SILs and the vacated PM_{2.5} SMC provisions from 40 CFR 51.166 and 52.21. *See* 78 FR 73698.

42745. Comments on the proposed rulemaking were due on or before August 22, 2014. No comments, adverse or otherwise, were received on EPA's July 23, 2014, proposed rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the changes to the Commonwealth's NSR program as provided in EPA's July 23, 2014, proposed rulemaking. EPA's July 23, 2014, proposed rulemaking contains more detailed information regarding the Commonwealth's SIP revision being approved today, and the rationale for today's final action. Detailed information regarding the PM_{2.5} NAAQS and NSR Program can also be found in EPA's July 23, 2014, proposed rulemaking as well as the aforementioned final rulemakings. *See* 79 FR 42745 (July 23, 2014), 73 FR 28321 (May 16, 2008) and 75 FR 64864 (October 20, 2010), respectively.

A. NSR PM_{2.5} Implementation Rule

On May 16, 2008, EPA finalized the NSR PM_{2.5} Rule to implement the PM_{2.5} NAAQS for the NSR permitting program. *See* 73 FR 28321. The NSR PM_{2.5} Rule revised the Federal NSR program requirements to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment areas and nonattainment areas (NAAs) that: (1) required NSR permits to address directly emitted PM_{2.5} and certain precursor pollutants; (2) established significant emission rates for direct PM_{2.5} and precursor pollutants (including sulfur dioxide (SO₂) and nitrogen oxides (NO_x)); (3) established NNSR PM_{2.5} emission offsets; and (4) required states to account for gases that condense to form particles (condensables) in PM_{2.5} and PM₁₀ applicability determinations and emission limits in PSD and NNSR permits; and (5) provided a grandfathering provision in the federal program for certain pending PM_{2.5} permit

applications. Additionally, the NSR PM_{2.5} Rule authorized states to adopt provisions in their NNSR rules that would allow interpollutant offset trading.² The Commonwealth's January 31, 2013, SIP revision addresses a portion of the PSD and NNSR provisions established in EPA's May 16, 2008 NSR PM_{2.5} Rule.

1. PM_{2.5} Implementation Rule(s) Litigation

On January 4, 2013, the United States Court of Appeals for the District of Columbia Circuit issued a judgment³ that remanded EPA's April 25, 2007⁴ and May 16, 2008 PM_{2.5} implementation rules implementing the 1997 PM_{2.5} NAAQS. *See Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013). The court found that because the statutory definition of PM₁₀ (see section 302(t) of the CAA) included particulate matter with an aerodynamic diameter less than or equal to 10 micrometers, it necessarily includes PM_{2.5}. EPA had developed the 2007 and 2008 (or NSR PM_{2.5} Rule) rules consistent with the general NAA requirements of subpart 1 of Part D, title I, of the CAA. Relative to subpart 1, subpart 4 of Part

² The Commonwealth's January 31, 2013 SIP submission did not adopt the NNSR interpollutant offset trading provisions EPA codified at 51.165(a)(11). The preferred trading ratios announced in the rule preamble were the subject of a petition to reconsider which was granted by the Administrator. As a result of the reconsideration, EPA issued a memorandum on June 20, 2011, providing that the ratios were no longer supported by the agency as being presumptively approvable for adoption in SIP's containing NNSR programs for PM_{2.5}. *See* EPA's June 20, 2011 Memorandum entitled "Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles (PM_{2.5})" at <http://www.epa.gov/nsr/guidance.html>.

³ The Natural Resources Defense Council, Sierra Club, American Lung Association, and Medical Advocates for Healthy Air challenged before the D.C. Circuit EPA's April 25, 2007 (72 FR 20586) Rule entitled "Clean Air Fine Particle Implementation Rule," that established detailed implementation regulations to assist states with the development of SIPs to demonstrate attainment for the 1997 annual and 24-hour PM_{2.5} NAAQS and the separate May 16, 2008 NSR PM_{2.5} Rule (the subject of today's proposed rulemaking). Today's final rulemaking only pertains to the impacts of the court's decision on the May 16, 2008 NSR PM_{2.5} Rule and not the April 25, 2007 implementation rule as the Commonwealth's January 31, 2013 SIP revision adopts the NSR permitting provisions established in the NSR PM_{2.5} Rule.

⁴ "Clean Air Fine Particle Implementation Rule" (hereafter referred to as the 2007 Rule); Final Rule, 72 FR 20586 (April 25, 2007).

D, title I includes additional provisions that apply to PM₁₀ NAA and is more specific about what states must do to bring areas into attainment. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM₁₀ precursors (and hence under the court decision, PM_{2.5} precursors) “except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area.”

The court ordered EPA to repromulgate the implementation rules pursuant to subpart 4.

Subpart 4 pertains exclusively to particulate matter NAA, and the Court did not address EPA’s implementation of the PM_{2.5} NAAQS under part C or the PSD program. Thus, EPA does not interpret the court’s decision as affecting implementation of the PSD requirements established in the May 16, 2008 NSR PM_{2.5} Rule and does not anticipate the need to revise any PSD requirements promulgated in the NSR PM_{2.5} Rule in order to comply with the court’s decision.

On June 2, 2014, EPA published a final rule⁵ which, in part, sets a December 31, 2014 deadline for states to make any remaining required attainment-related and NNSR SIP submissions, pursuant to and considering the application of subpart 4. *See* 79 FR 31566. The Court’s January 4, 2013 decision can be found in the docket for today’s final rulemaking using Docket ID: EPA-R04-OAR-2013-0486.

⁵ The final rule is entitled “Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) and 2006 PM_{2.5} NAAQS.” This final rule also identifies the initial classification of current 1997 and 2006 PM_{2.5} nonattainment areas as moderate and the EPA guidance and relevant rulemakings that are currently available regarding implementation of subpart 4 requirements.

2. “Condensable PM” Correction

In the NSR PM_{2.5} Rule, EPA revised the definition of “*regulated NSR pollutant*” for PSD to add a paragraph providing that “particulate matter (PM) emissions, PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures” and that on or after January 1, 2011, “such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM_{2.5} and PM₁₀ in permits.” *See* 73 FR 28321 at 28348. A similar paragraph added to the NNSR rule does not include “particulate matter (PM) emissions.” *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On October 25, 2012, EPA took final action to amend the definition of “*regulated NSR pollutant*” promulgated in the NSR PM_{2.5} Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and EPA’s Emissions Offset Interpretative Ruling. *See* 77 FR 65107. The rulemaking removed the inadvertent requirement in the NSR PM_{2.5} Rule that the measurement of condensable particulate matter be included as part of the measurement and regulation of “*particulate matter emissions*.” The term “*particulate matter emissions*” includes filterable particles that are larger than PM_{2.5} or PM₁₀ and is an indicator measured under various New Source Performance Standards (NSPS) (40 CFR part 60).⁶ The Commonwealth’s January 31, 2013 SIP revision adopts EPA’s definition for “*regulated NSR pollutant*” requiring states to consider condensables (at 40 CFR 51.166(b)(49)(vi)), excluding the term “*particulate matter emissions*.”

⁶ In addition to the NSPS for PM, it is noted that states regulated “particulate matter emissions” for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

B. PM_{2.5} PSD-Increment-SILs-SMC Rule.

The October 20, 2010, final rulemaking established PM_{2.5} increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS. Today's action pertains only to the PM_{2.5} increments (and relevant related implementing provisions) promulgated in the October 20, 2010, rule. The Commonwealth's January 31, 2013, SIP revision adopts the PSD increment provisions promulgated in the PM_{2.5} PSD Increments-SILs-SMC Rule to be consistent with the Federal NSR regulations and to appropriately implement the Commonwealth's NSR program for the PM_{2.5} NAAQS.

As established in part C of title I of the CAA, EPA's PSD program protects public health from adverse effects of air pollution by ensuring that construction of new or modified sources in attainment or unclassifiable areas does not lead to significant deterioration of air quality, while simultaneously ensuring that economic growth will occur in a manner consistent with preservation of clean air resources. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility "will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant." In other words, when a source applies for a permit to emit a regulated pollutant in an area that is designated as attainment or unclassifiable for a NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the "maximum

allowable increase” of an air pollutant allowed to occur above the applicable baseline concentration⁷ for that pollutant.⁸

As described in the PM_{2.5} PSD Increments-SILs-SMC Rule, and pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical increments for PM_{2.5} as a new pollutant⁹ for which NAAQS were established after August 7, 1977,¹⁰ and derived 24-hour and annual PM_{2.5} increments for the three area classifications (Class I, II and III). *See* 75 FR 64864 at 64869 and the ambient air increment table at 40 CFR 51.166(c)(1) and 52.21(c). In addition to establishing PSD increments for the PM_{2.5} NAAQS, the PM_{2.5} PSD Increments-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for “major source baseline date” and “minor source baseline date” (including trigger dates) to establish the PM_{2.5} NAAQS specific dates associated with the implementation of PM_{2.5} PSD increments. *See* 75 FR 64864. As discussed above, the Commonwealth’s January 31, 2013, SIP revision adopts the PM_{2.5} PSD increment permitting requirements, including the implementing regulations discussed above, promulgated in the PM_{2.5} PSD Increments-SILs-SMC Rule.

⁷ Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area.

⁸ For purposes of calculating increment consumption, a baseline area for a particular pollutant includes the attainment or unclassifiable area in which the source is located as well as any other attainment or unclassifiable area in which the source’s emissions of that pollutant are projected (by air quality modeling) to result in an ambient pollutant increase of at least 1 microgram per meter cubed ($\mu\text{g}/\text{m}^3$) (annual average). *See* 40 CFR 52.21(b)(15)(i).

⁹ EPA generally characterized the PM_{2.5} NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM₁₀ NAAQS with the NAAQS for PM_{2.5} when the PM_{2.5} NAAQS were promulgated in 1997. EPA rather retained the annual and 24-hour NAAQS for PM₁₀ (retaining PM₁₀ as an indicator of coarse particulate matter), and treated PM_{2.5} as a new pollutant for purposes of developing increments even though EPA had already developed air quality criteria for PM generally. *See* 75 FR 64864 (October 20, 2010).

¹⁰ EPA interprets section 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

C. EPA's Conversion of Conditional Approvals for the Commonwealth's

Infrastructure SIP

In addition to adopting required NSR permitting regulations for the implementation of the PM_{2.5} NAAQS, the Commonwealth's January 31, 2013, SIP revision also satisfies EPA's conditional approval of the Commonwealth's 1997 annual and 2006 24-hour PM_{2.5}, and 2008 8-hour Ozone 110(a)(2) infrastructure SIPs¹¹ with respect to the PSD-related requirements¹² of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) of the CAA. Kentucky submitted multiple SIP submissions to EPA for approval to address the 110(a)(2) infrastructure SIP requirements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS (August 26, 2008 and July 17, 2012, respectively), and the 2008 8-hour Ozone NAAQS (July 7, 2012).

On July 3, 2012, Kentucky submitted a letter requesting that EPA conditionally approve the Commonwealth's infrastructure SIP submissions with respect to PSD-related requirements

¹¹ The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. On July 18, 1997, EPA promulgated the primary 1997 annual and 24-hour PM_{2.5} NAAQS as 15 µg/m³ and 65 µg/m³ respectively. *See* 62 FR 38652. On October 17, 2006, EPA strengthened the 24-hour PM_{2.5} NAAQS to 35 µg/m³. *See* 71 FR 61144. On March 27, 2008, EPA revised the NAAQS for ozone based on an 8-hour average concentrations to 0.075 parts per million (ppm). *See* 73 FR 16436.

¹² There are four separate PSD-related rulemakings that states are required to adopt and have approved into their SIP in order to maintain a comprehensive SIP-approved PSD permitting program and comply with the PSD and enforcement requirements of 110(a)(2) infrastructure requirements for sections 110(a)(2)(C), (D)(i)(II) and (J) of the CAA. These include: 1) "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2 Rule; Final Rule" (which codified NOx as an ozone precursor for NSR) (70 FR 71612, November 29, 2005); 2) "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule" (75 FR 31514, June 3, 2010) (as consistent with the Supreme Court's decision in *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S. Ct. 2427 (June 23, 2014)); 3) the NSR PM_{2.5} Rule and; 4) the PM_{2.5} PSD Increment-SILs-SMC Rule (only as it relates to PM_{2.5} Increments). *See* 77 FR 46352 (August 3, 2012), 78 FR 3867 (January 17, 2013) and 77 FR 72291 (December 5, 2012). Kentucky's January 31, 2013 submission satisfies two of the four required PSD rulemakings mentioned above including the 2008 NSR PM_{2.5} Rule and the PM_{2.5} Increments-SILs-SMC Rule (only as it relates to the PSD increments). EPA approved the remaining PSD requirements for the Greenhouse Gas Tailoring Rule and the Phase 2 Rule on December 29, 2010 (75 FR 81868) and on September 15, 2010 (75 FR 55988), respectively.

for sections 110(a)(2)(C) and 110(a)(2)(J) for the 1997 and 2006 PM_{2.5} NAAQS.¹³ Additionally, the Commonwealth submitted another correspondence on December 19, 2012, requesting conditional approval for PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) and 110(a)(2)(J) for the 2008 lead and 2008 8-hour Ozone NAAQS infrastructure submissions.¹⁴ Both letters documented the Commonwealth's commitment to adopt and submit the PSD-related provisions needed to comply with sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) all in accordance with section 110(k)(4) of the CAA to ensure a comprehensive PSD program.

EPA took action to approve in part and conditionally approve in part portions of the Commonwealth's infrastructure SIP submissions for the 1997 and 2006 PM_{2.5} NAAQS on October 3, 2012, and March 26, 2013, and for the 2008 8-hour ozone NAAQS on March 7, 2013. *See* 77 FR 60307, 78 FR 18241, and 78 FR 14681, respectively. The Commonwealth's January 31, 2013, SIP revision satisfies the conditions listed in EPA's previous conditional approvals for the infrastructure submissions.

II. This Action

EPA is taking final action to approve into the Kentucky SIP the Commonwealth's January 31, 2013, SIP revision, which adopts the NSR permitting regulations to implement the NSR program for the PM_{2.5} NAAQS. Specifically, the Commonwealth adopts the federal NSR

¹³ EPA also relied upon Kentucky's July 3, 2012 commitment to address the PSD-related requirements as the basis for conditionally approving the Commonwealth's 1997 and 2006 PM_{2.5} NAAQS infrastructure SIPs as they relate to section 110(a)(2)(D)(i)(II). *See* 78 FR 18241 (March 26, 2013). EPA had already conditionally approved the Commonwealth's infrastructure SIPs for the 1997 and 2006 PM_{2.5} NAAQS for the PSD-related requirements related to sections 110(a)(2)(C) and (J) on October 3, 2012. *See* 77 FR 60307.

¹⁴ EPA has not taken action on the Commonwealth's 2008 lead infrastructure SIP submission but will consider the action in a separate rulemaking.

permitting requirements as promulgated in the NSR PM_{2.5} Rule and PSD Increment-SILs-SMC Rule (40 CFR 51.165 and 51.166) at regulations 401 KAR 51:001, 51:017, and 51:052 into the Kentucky SIP. With respect to the NSR PM_{2.5} Rule, the Commonwealth adopts the following: (1) the requirement for PSD and NNSR permits to address directly emitted PM_{2.5} and precursor pollutants (sulfur dioxide (SO₂) and nitrogen oxides (NO_x) (as codified at 40 CFR 51.165(a)(1)(xxxvii)(C) and 51.166(b)(49)); (2) the significant emission rates for direct PM_{2.5} and precursor pollutants (SO₂ and NO_x) (as codified at 40 CFR 51.165(a)(1)(x)(A) and 51.166(b)(23)(i)); (3) the NNSR PM_{2.5} emission offsets (as codified at 51.165(9)(i)), and (4) the PSD and NNSR requirement that condensable PM₁₀ and PM_{2.5} emissions be accounted for in PSD applicability determinations and in establishing emissions limitations for permitting (as codified at 40 CFR 51.165(a)(1)(xxxvii)(D) and 51.166(b)(49)).

With respect to the PSD Increment-SILs-SMC Rule, the Commonwealth's January 31, 2013, SIP revision adopts the PSD increments for PM_{2.5} annual and 24-hour NAAQS pursuant to section 166(a) of the CAA. Specifically, the SIP revision changes include: 1) the PM_{2.5} increments as promulgated at 40 CFR 51.166(c)(1) and (p)(4) (for Class I Variances); and 2) amendments to the terms "*major source baseline date*" (at 40 CFR 51.166(b)(14)(i)(c)), "*minor source baseline date*" (including establishment of the "trigger date") (at section 51.166(b)(14)(ii)) and "*baseline area*" (as amended at 51.166(b)(15)(i)). As discussed above, on July 22, 2014, Kentucky submitted a letter to EPA withdrawing the PM_{2.5} SILs and SMC provisions promulgated in the PM_{2.5} PSD Increments-SILs-SMC Rule and later vacated by the D.C. Circuit Court of Appeals (*See Sierra Club*, 705 F.3d at 458). Therefore, these provisions are no longer before EPA for consideration.

As discussed above in section I, the D.C. Circuit in *Natural Resources Defense Council v. EPA* issued a decision that remanded the EPA's NSR PM_{2.5} Rule implementing the 1997 PM_{2.5} NAAQS. The court found that EPA erred in implementing the PM_{2.5} NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the Clean Air Act, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. On June 2, 2014, the EPA issued a final rulemaking that begins to address the remand. *See* 79 FR 31566. Upon its effective date, the final rule classifies all existing PM_{2.5} nonattainment areas as "Moderate" nonattainment areas and sets a deadline of December 31, 2014, for states to submit any SIP submissions, including NNSR SIPs, that may be necessary to satisfy the requirements of subpart 4, part D, title I of the CAA with respect to PM_{2.5} nonattainment areas.¹⁵

Kentucky's submission does not include the regulation of volatile organic compounds (VOCs) and ammonia as PM_{2.5} precursors, nor does it include a demonstration consistent with section 189(e) showing that major sources of those precursor pollutants would not contribute significantly to PM_{2.5} levels exceeding the standard in the area. Therefore, EPA cannot conclude at this time that this part of Kentucky's NNSR submission of revisions to Chapters 51:001 and 51:052 satisfies all of the requirements of subpart 4 as they pertain to PM_{2.5} NNSR permitting. Although the revisions to Kentucky's NNSR regulations at Chapters 51:001 and 51:052 may not contain all of the necessary elements to satisfy the CAA requirements when evaluated under the

¹⁵ EPA set a deadline of December 31, 2014, for the states to submit any additional attainment related SIP elements that may be needed to meet the applicable requirements of subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM_{2.5} NAAQS, and to submit SIPs addressing the NNSR requirements in subpart 4. EPA believes that this period provides a relatively brief but reasonable amount of time for states to ascertain whether and to what extent any additional submissions are needed for a particular 1997 or 2006 PM_{2.5} NAAQS nonattainment area, and to develop, adopt and submit any such SIPs.

subpart 4 provisions, the revisions themselves represent a strengthening of the currently-approved Kentucky NNSR SIP which does not address PM_{2.5} at all. As a result of the June 2, 2014 (79 FR 31566) final rule, Kentucky has until December 31, 2014, to make any additional submission necessary to address the requirements of subpart 4, including addressing the PM_{2.5} precursors of VOC and ammonia for NNSR permitting purposes. Therefore, EPA is approving the NNSR revisions to Kentucky's NNSR permitting program without listing the absence of either the regulation or evaluation of VOCs and ammonia as PM_{2.5} precursors as a deficiency at this time.

Finally, as discussed in section I above and in EPA's proposed action (*See* 79 FR 42745, July 23, 2014), Kentucky's January 31, 2013, SIP revision also satisfies the conditions listed in EPA's previous conditional approvals for the Commonwealth's 2008 8-hour ozone, and 1997 annual and 2006 24-hour PM_{2.5} NAAQS infrastructure SIP submissions. Therefore, EPA is taking final action to convert its conditional approvals with respect to the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) and 110(a)(2)(J) to full approvals. Given that the Commonwealth's January 31, 2013, SIP revision fulfills the conditional approval requirements for conversion to a full approval, the conditional approval language at section 52.919(a) – (c) of 40 CFR part 52, included in EPA's final conditional approvals published on October 3, 2012 (77 FR 60307), March 7, 2013 (78 FR 14681) and March 26, 2013 (78 FR 18241) is no longer necessary. This action removes the conditional approval language at 40 CFR 52.919, with the approval of the Commonwealth's January 31, 2013, SIP revision, to reflect that the infrastructure SIPs for the Commonwealth's 2008 8-hour ozone, and 1997 annual and 2006 24-hour PM_{2.5} NAAQS have been fully approved.

III. Final Action

EPA is taking final action to approve the Commonwealth of Kentucky's January 31, 2013, SIP revision adopting Federal regulations amended in the May 16, 2008, NSR PM_{2.5} Rule and the October 20, 2010, PM_{2.5} PSD Increment-SILs-SMC rule. EPA is approving these revisions into the Kentucky SIP because they are consistent with section 110 of the CAA and its implementing regulations. Final approval of the Commonwealth's January 31, 2013, SIP also satisfies the requirements upon which EPA conditionally approved several Kentucky infrastructure requirements related to the 1997 and 2006 PM_{2.5} and the 2008 8-hour ozone NAAQS. Accordingly, EPA is also taking final action today to convert EPA's previous conditional approval of the Commonwealth's infrastructure requirements related to PSD requirements for the PM_{2.5} and ozone NAAQS to a full approval.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65

FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 22, 2014.

Heather McTeer Toney,
Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S – Kentucky

§ 52.919 [Removed and Reserved]

2. Section 52.919 is removed and reserved.

3. Section 52.920(c) is amended by revising the entries for 401 KAR 51:001, 401 KAR 51:017 and 401 KAR 51:052 to read as follows:

§52.920 Identification of plan.

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(c) * * *

TABLE 1 - EPA APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
401 KAR 51:001	Definitions for 401 KAR Chapter 51	12/7/2012	[Insert date of publication in <u>Federal Register</u>] [Insert Federal Register Citation]	
**	**	*	*	*
401 KAR 51:017	Prevention of significant deterioration of air quality	12/7/2012	[Insert date of publication in <u>Federal Register</u>] [Insert Federal Register Citation]	With the exception of the SILs and SMC provisions for PM _{2.5}

401 KAR 51:052	Review of new sources in or impacting upon nonattainment areas	12/7/2012	[Insert date of publication in <u>Federal Register</u>] [Insert Federal Register Citation]	With the exception of the SILs and SMC provisions for PM _{2.5}
**	**	*	*	*

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[FR Doc. 2014-25950 Filed 10/31/2014 at 8:45 am; Publication Date: 11/03/2014]